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D.B. CIVIL SPECIAL APPEAL NO.46/2007.
[GAURI SHANKER OJHA VS. BOPALWAL ARYA HIGHER SECONDARY SCHOOL MANAGING COMMITTEE & ORS.]

DATED : 19.01.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.G.R.Goyal for the appellant.

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Having heard learned counsel for the parties, we do not find any force in this appeal. The appellant who was employed as a teacher under respondent No.1 which as a non governmental Educational Institute. He retired on completing age of superannuation on 31.07.1990.

Non-governmental Educational Institute Act came into force on 01.01.1993. Under the provisions of said Act, the provisions of the Gratuity Act, 1972 were extended to the employees of Rajasthan Non-Educational Institute Act, 1989.

The appellant non-petitioner made a complaint before the Secretary, Zila Janabhav Nirakaran Satarkta Samiti cum Additional Collector, City, Sri Ganganagar claiming payment of gratuity as on the date he retired from the service in terms of Rule 82 [1] framed under the Act of 1989. The Additional Collector directed the respondent No.1 management of the school to pay the gratuity amount to the appellant

which become due to him under Rule 82 [1] of the Rules of 1993.

The said order of the Additional Collector was subjected to challenge in Writ Petition No.225/2006 by the respondent No.1 and the same has been allowed vide order under appeal by holding that petitioner having retired prior to commencement of the Act of 1989 and Rules made thereunder he is not entitled to the gratuity. The learned Single Judge also relied on the decision of the Hon'ble Supreme Court in the matter of Ahmedabad Pvt. Primary Teachers Association Vs. Administrative Officer & Ors. reported in [2004] 1 SCC 755 .

Learned counsel for the appellant urges that a learned Single Judge of this Court in the matter of Pawan Bhargav's case reported in WLC Raj. [UC] 765 had held that the provisions related to the gratuity under the Rules of 1993 are applicable to those employees also who got retired prior to the application of the said Act inter alia on the ground that there can be no discrimination between the employees who got retired prior to application of 1989 Act and those who got retired after the application of the said Act.

Having given our thoughtful consideration we are of the opinion that it is well settled principle that no legislative Act becomes operative retrospectively unless it is so done by express provision or can be inferred by necessary implication. It is not anybody's case that Act of 1989

is retrospective operation.

It is not in dispute and cannot be disputed that the teachers as such do not fall within the ambit of Gratuity Act, 1972 so as to claim benefit of Gratuity under the aforesaid Act on its own force. It is only because of incorporation of the said provisions by reference in the provision under the Act of 1989 that benefit of the provisions of the Gratuity Act of 1972 were extended to the employees of Non-Governmental Educational Act as defined in that Act which includes teachers also. The Act of 1989 being not retrospective in operation no benefit can be derived by the appellant who was not on the scene when the Act of 1989 and Rules framed thereunder came into force so as to be governed by said provision in giving effect to any legislative provision with effect from the date of its commencement no questions of hostile discrimination can arise by drawing comparison between those who retired before commencement of Act of 1989 with those who retired after its commencement and came under its governance.

We are therefore, unable to sustain the observations made by the learned Single Judge in Pawan Bhargav's case. In our opinion it is not correct statement of law, we are in agreement with the reasoning of the order under appeal. Learned Single Judge in his conclusion in order under appeal rightly observed that since as on the date the appellant retired, his right to retiral benefits were determined in accordance with law

enforce on that date, since on the date of retirement no right to claim the Gratuity under any law, accrued he did not become entitled to claim gratuity nor the Zila Janabhav Nirakaran Satarkta Samiti had any statutory authority to issue direction in that regard, particularly keeping in view in respect of grievance arising under the Act of 1989 the forum of appeal to a Tribunal constituted thereunder has been provided. Merely because the Zila Janabhav Nirakaran Satarkta Samiti has as its member certain state functionaries they do not have any extra legal, extra constitutional inherent authority to issue such direction. They can at best act as a catalyst to find a negotiated solution. But no authority can be assumed by it to issue such enforceable direction. We do not find any merit in this appeal and the same is hereby dismissed.

[CHATRA RAM JAT],J. **[RAJESH BALIA], J.**

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